SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 744

UNITED STATES OF AMERICA, APPELLANT,

vs.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

INDEX

1 DOCKET ENTRIES

THE UNITED STATES

VS.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Civ.: T. 18 USC (Rev) Sec. 610 as amended

(Federal Corrupt Practices Act)

Attorneys For U. S.: Fred W. Kaess, George E. Woods, 813 Federal Bldg., Det. 26, Simon E. Sobeloff, Dept. of Justice, Wash., D.C.
For Defendant: Harold A. Cranefield, 8000 E. Jefferson, Detroit 14, Norma Zarky, John Silard, Kurt Hanslowe, Redmond H. Roche, Jr.

1955

July 20. Indictment and Report filed.
July 29. Appearance filed.
July 29. Orr. has counsel, Harold A. Cranefield, pleads not guilty. Koscinski, J.
July 29. Motion and Order extending time within which deft. may move for Bill of Particulars or raise defenses or objections, filed and entered. Koscinski, J.
Aug. 3. Transcript filed.
Sept. 26. Motion to extend time within which deft. may move for Bill of Particulars or raise defenses and objections, filed. Hearing Sept. 26/55.
Sept. 26. Order extending time within which deft. may move for Bill of Particulars or raise defenses or objections, filed & entered. Picard, J.
2 Oct. 31. Motion to dismiss the indictment filed.
Nov. 2. Notice of Motion to dismiss filed—Hearing Dec. 12/55.
Dec. 9. Affidavit of service, filed.
Dec. 12. Hearing on motion to dismiss submitted with briefs to be filed by Jan. 16/56. Picard, J.
Dec. 22. Transcript filed.
2-3-56. Opinion of the court, filed and entered. Picard, J.
2-8-56. Order dismissing indictment filed and entered. Picard, J.
2-20-55. Notice of Appeals to U. S. Supreme Court, filed.

3-4 United States District Court, Eastern District of Michigan, Southern Division

Viol: Title 18 USC (Rev.) Sec. 610 as amended.

(Federal Corrupt Practices Act)

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), DEFENDANT

INDICTMENT—July 20, 1955

Count One

The Grand Jury Charges:

1. That at all times herein mentioned, International Union United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), hereinafter called defendant, was a labor organization as defined in Title 18 United States Code (Revised), Section 610, and a labor organization, agency, and employee representation committee and plan, in which employees participated, and which existed for the purpose, in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

2. That on the third day of August, 1954, pursuant to the laws of the State of Michigan, a primary election within and for the State of Michigan was held to select candidates for United States Senator and Representatives in the Congress of the United States.

3. That on or about the ninth day of August, 1954, at Detroit in the State of Michigan, and within the jurisdiction of this court, defendant did knowingly and unlawfully make an expenditure from the general funds of said defendant labor organization in connection with the aforesaid primary election in which candidates for United States Senator, and Representatives in Congress were to be
5 selected in said State of Michigan, in the following manner and by the following means, that is to say:

That defendant expended the sum of One Thousand Four Hundred Seventeen Dollars and Fifty Cents ($1,417.50) from its general Treasury fund, by paying said sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expense of preparation for and telecasting of political television broadcasts sponsored by defendant over Television Station WJBK-TV, Detroit, Michigan, in July, 1954, urging and endorsing the selection of certain persons to be candidates of the Democratic Party in Michigan for

Representatives in the Congress of the United States, which telecasts included expressions of political advocacy, and were intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said primary election.

4. That said expenditure of money mentioned in Paragraph 3 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for telecasts mentioned in Paragraph 3 of this Count was not paid for by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically ear-marked for political purposes.

5. That the telecasts sponsored and paid for by defendant as mentioned in Paragraphs 3 and 4 of this Count were beamed on a commercial television station in which defendant had no financial interest, and were intended by defendant to be beamed to and received by, and were beamed to, and received by the gen-
6 eral public, all in violation of Title 18 United States Code (Rev.), Sec. 610 as amended.

Count Two

The Grand Jury further charges:

1. The Grand Jury re-alleges all of the allegations of the first paragraph in the first count of this indictment.

2. That on the second day of November, 1954, pursuant to the laws of the United States and of the State of Michigan, a general election was held within and for the State of Michigan, at which, among others, a United States Senator, and Representatives in the Congress of the United States were to voted for.

3. That on or about the thirteenth day of September, 1954, at Detroit in the State of Michigan, and within the jurisdiction of this court, said defendant did knowingly and unlawfully make an expenditure from the general funds of said defendant labor organization in connection with the aforesaid general election in which a United States Senator, and Representatives in the Congress of the United States were to be voted for, in said State of Michigan, in the following manner and by the following means, that is to say:

That defendant expended the sum of Seven Hundred Eight Dollars and Seventyfive Cents ($708.75) from its general Treasury

fund, by paying said sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expense of preparation for and telecasting of a political television broadcast sponsored by defendand over Television Station WJBK-TV, Detroit, Michigan, in August, 1954, urging and endorsing the election in Michigan of the candidates of the Democratic Party for United States Senator, and Representatives in the Congress of the United States, which telecast included expressions of political advocacy, and was intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said election.

7 4. That said expenditure of money mentioned in Paragraph 3 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for a telecast mentioned in Paragraph 3 of this Count was not paid for by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically ear-marked for political purposes.

5. That the telecast sponsored and paid for by defendant as mentioned in Paragraphs 3 and 4 of this Count was beamed on a commercial television station in which defendant had no financial interest, and was intended by defendant to be beamed to and received by, and was beamed to, and received by, the general public, all in violation of Title 18 United States Code (Rev.), Sec. 610 as amended.

Count Three

The Grand Jury further charges:

1. The Grand Jury re-alleges all of the allegations contained in the first paragraph of Count One, and the second paragraph of Count Two of this indictment.

2. That on or about the fifth day of October, 1954, at Detroit in the State of Michigan, and within the jurisdiction of this court, said defendant did knowingly and unlawfully make an expenditure from the general funds of said defendant labor organization in connection with the aforesaid general election in which a United

8 States Senator, and Representatives in the Congress of the United States were to be voted for, in said State of Michigan, in the following manner and by the following means, that is to say:

That defendant expended the sum of One Thousand Three Hun-

dred Thirtyeight Dollars and Seventyfive Cents ($1,338.75) from its general Treasury fund, by paying said sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expense of preparation for and telecasting of political television broadcasts sponsored by defendant over Television Station WJBK-TV, Detroit, Michigan, in September, 1954, urging and endorsing the election in Michigan of the candidates of the Democratic Party for United States Senator, and Representatives in the Congress of the United States, which telecasts included expressions of political advocacy, and were intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said election.

3. That said expenditure of money mentioned in Paragraph 2 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for telecasts mentioned in Paragraph 2 of this Count was not paid by by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically ear-marked for political purposes.

9 4. That the telecasts sponsored and paid for by defendant as mentioned in Paragraphs 2 and 3 of this Count were beamed on a commercial television station in which defendant had no financial interest, and were intended by defendant to be beamed to and received by, and were beamed to, and received by the general public, all in violation of Title 18 United States Code (Rev.), Sec. 610 as amended.

Count Four

The Grand Jury further charges:

1. The Grand Jury re-alleges all of the allegations contained in the first paragraph of Count One, and the second paragraph of Count Two of this indictment.

2. That on or about the twelfth day of November, 1954, at Detroit in the State of Michigan, and within the jurisdiction of this court, said defendant did knowingly and unlawfully make an expenditure from the general funds of said defendant labor organization in connection with the aforesaid general election in which a United States Senator, and Reprsentatives in the Congress of the

United States were to be voted for, in said State of Michigan, in the following manner and by the following means, that is to say:

That defendant expended the sum of Two Thousand Five Hundred Twenty Dollars ($2,520.00) from its general Treasury fund, by paying said sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expense of preparation for and telecasting of political television broadcasts sponsored by defendant over Television Station WJBK-TV, Detroit, Michigan, in October, 1954, urging and endorsing the election in Michigan of the candidates of the Democratic Party for United States Senator, and Representatives in the Congress of the United States, which telecasts included expressions of political advocacy, and were intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said election.

3. That said expenditure of money mentioned in Paragraph 2 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for telecasts mentioned in Paragraph 2 of this Count was not paid for by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically ear-marked for political purposes.

4. That the telecasts sponsored and paid for by defendant as mentioned in Paragraphs 2 and 3 of this Count were beamed on a commercial television station in which defendant had no financial interest, and were intended by defendant to be beamed to and received by, and were beamed to, and received by the general public, all in violation of Title 18 U.S.C. (Rev.), Sec. 610 as amended.

A True Bill.

EDWARD L. HOLMES,
Foreman.

TOM DEWOLFE,
Special Assistant to the Attorney General.

WILLIAM A. PAISLEY,
Special Assistant to the Attorney General.

FRED W. KAESS,
United States Attorney.

GEORGE E. WOODS,
Chief Asst. U. S. Attorney.

11 [File endorsement omitted]

In the District Court of the United States for the Eastern District of Michigan, Southern Division

APPEARANCES—Filed July 29, 1955

(Title omitted)

To the Clerk of the Court:

Please enter my appearance as Attorney for Defendant International Union, etc., in the above entitled cause.

Dated: Detroit, Michigan, July 29, 1955.

HAROLD A. CRANEFIELD,
8000 E. Jefferson Ave.,
Detroit 14, Mich.,
LO 8-4000

12 [File endorsement omitted]

United States District Court, Eastern District of Michigan, Southern Division

(Title omitted)

ORDER EXTENDING TIME WITHIN WHICH DEFENDANT MAY MOVE FOR BILL OF PARTICULARS OR RAISE DEFENSES OR OBJECTIONS.—July 29, 1955

The motion of defendant in the above-entitled cause for an extension of time within which to make certain motions under Rules 7 and 12 of the Federal Rules of Criminal Procedure came on to be heard this 29th day of July, 1955 on the affidavit of Harold A. Cranefield, attorney for the said defendant and thereupon, upon consideration thereof, it was

ORDERED—that the time within which defendant may move for a bill of particulars under Rule 7 of the Federal Rules of Criminal Procedure be and the same hereby is extended to September 30, 1955, and it is

FURTHER ORDERED—that the time within which the defendant may raise defenses and objections otherwise required by Rule 12 of the Federal Rules of Criminal Procedure to be raised before entry of plea be and the same hereby is extended to September 30, 1955.

Dated: July 29, 1955.

_____, _____,
District Judge.

13 [File endorsement omitted]

United States District Court, Eastern District of Michigan, Southern Division

[Title omitted]

MOTION TO EXTEND TIME WITHIN WHICH DEFENDANT MAY MOVE FOR BILL OF PARTICULARS OR RAISE DEFENSES AND OBJECTIONS REQUIRED BY RULE 12 TO BE RAISED BEFORE PLEA—Filed July 29, 1955

Comes now International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), the defendant in the above-entitled cause, by Harold A. Cranefield, its attorney and moves the Court:

1. that the time within which the said defendant may move for a bill of particulars under Rule 7 of the Federal Rules of Criminal Procedure be extended to September 30, 1955;

2. that the time within which the said defendant may raise defenses and objections otherwise required by Rule 12 of the Federal Rules of Criminal Procedure to be raised before entry of plea be extended to September 30, 1955;

14 This motion is based on the affidavit of Harold A. Cranefield attached hereto and made a part hereof.

Dated this 29th day of July, 1955.

HAROLD A. CRANEFIELD,
Attorney for Defendant.

15 United States District Court, Eastern District of Michigan, Southern Division

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION TO EXTEND TIME

UNITED STATES OF AMERICA,
Eastern District of Michigan,
Wayne County, ss.

Harold A. Cranefield, being first duly sworn, deposes and says:

1. that he is attorney for the defendant in the above-entitled prosecution and resides in the City of Detroit, Michigan;

2. that defendant is a voluntary unincorporated association; that deponent is General Counsel for the defendant and as such is charged with the general supervision of the representation of defendant in all legal matters and in all actions, civil or criminal, to which defendant is a party;

3. that the indictment in this prosecution was returned on July 20, 1955, on which day deponent was in Madison, Wisconsin
16 on the affairs of the defendant; that deponent was unable to return to his office in Detroit until July 22, 1955;

4. that the Supreme Court of the United States expressed doubt in the case of *United States v. Congress of Industrial Organizations*, 335 U. S. 106, as to the constitutional validity of applying the statute under which the indictment in this prosecution is laid to facts similar to those alleged in this indictment; that the indictment raises constitutional questions of great importance to all labor organizations, corporations, and political organizations and to the nation, generally; that additional time is required by deponent, particularly in view of the seasonal unavailability of many persons from whom information and counsel is desired in order to determine whether any motions under Rule 7 (f) or Rule 12 (b)(2) of the Federal Rules of Criminal Procedure ought to be made in the interest of insuring that the constitutional questions involved are fully and fairly presented on the trial of this cause.

HAROLD A. CRANEFIELD

Subscribed and sworn to, before me this 29th day of July, 1955.

MIRIAM LEE,
Notary Public, Wayne County, Michigan.

My commission expires 12-10-56.

17 In the District Court of the United States for the Eastern District of Michigan, Southern Division

[Title omitted]

Transcript of Proceedings of July 29, 1955 on Arraignment and Plea

Proceedings had before Honorable Arthur A. Koscinski, District Judge, Detroit, Michigan, Friday, July 29, 1955, at the time of arraignment:

APPEARANCES:

George E. Woods, Assistant United States Attorney, Appearing for the United States.

Harold A. Cranefield, Attorney, appearing for defendant.

18 THE COURT: United States versus International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO).

Mr. Woods: This, your Honor, is an arraignment on an indict-

ment. The International Union of United Automobile Workers is represented by Mr. Harold Cranefield, general counsel.

The COURT: I take it that you have a copy of the indictment?

Mr. CRANEFIELD: We have a copy of the indictment, your Honor.

The COURT: What is the plea?

Mr. CRANEFIELD: If the Court will permit, I should like, before proceeding with the plea, to file a motion. I have provided the District Attorney with a copy. I will ask the Clerk to hand it up.

The COURT: Just a minute. At this stage of the proceeding it is premature to file a motion. After the plea is entered today, the case goes to the Clerk's office, where, under the system established there some years ago, it goes to one of the six Federal judges in this court. At this moment it is not known which of the six judges will have the case. So that, I would suggest, counsel, that you withhold filing the motion until we find out which judge it is.

Mr. CRANEFIELD: If the Court would permit me to explain the nature of the motion, I believe the Court will agree that it would be properly entertained now, and by your Honor.

19 The COURT: All right.

Mr. CRANEFIELD: Under Rule 7 of the Federal Rules of Criminal Procedure, a motion for a bill of particulars is required to be filed within ten days after arraignment, as your Honor is aware.

Under Rule 12 (b), certain objections and exceptions, defenses, objections to the indictment, and certain defenses, must be interposed before plea.

I have solicited from the District Attorney a stipulation that our time might be extended within which to file a motion for a Bill of Particulars, or to raise some of those defenses or objections.

I am aware that under the rules the Court may, in its discretion, entertain a motion for a bill of particulars, or receive some of the defenses or objections to the indictment, notwithstanding the lapse of time. But, that requires a particular showing of cause. What I have here is a motion, supported by my affidavit, merely extending the time to September 30, 1955, within which we may file a Bill of Particulars, even though that will be more than a motion for a bill of particulars, and even though that will be more than ten days after arraignment, and extending the time within which we might make certain objections to the indictment, to the same date.

The COURT: Mr. Cranefield, couldn't that be done just as well later? It can be done in a few minutes, just as soon as the

20 Clerk here takes the file back to the Clerk's office, and ascertain which of the judges is going to handle this case, and then you file your motion there.

Mr. CRANEFIELD: But, your Honor, I am confronted by the specific provision of Rule 12 (b), that those defenses are waived, if not interposed before arraignment, before plea.

The COURT: All right. Let me see them.

Mr. CRANEFIELD: Rule 12 (b), paragraph 2, your Honor, states that they are waived unless interposed before plea.

I am at a loss to understand the District Attorney's reluctance to stipulate.

That is 12 (b), sub-paragraph 2.

The COURT: Well, which sub-division under paragraph (b) do you refer to?

Mr. CRANEFIELD: Sub-paragraph 2, of 12 (b).

The COURT: All right. Give me a moment to read that.

Mr. CRANEFIELD: Yes, sir.

(The Court examines rules.)

The COURT: As I read it, it may be raised only by motion before trial. Is that what you stress?

Mr. CRANEFIELD: The time is fixed by sub-paragraph 3. I should have directed your attention also to sub-paragraph 3.

(Court further examines rules.)

The COURT: Did they enter a plea here?

Mr. WOODS: Sir?

21 The COURT: Has the plea been entered?

Mr. WOODS: The plea has not been entered, no, sir.

The COURT: Under sub-division 4, it reads:

> "A motion before trial, raising defenses or objections, shall be determined before trial, unless the court orders that it be deferred for determination at the trial of the general issue."

Mr. CRANEFIELD: I do not propose, your Honor, by my motion to interpose any objection to the indictment, or any special defense at this time. I seek relief only from the time limitations. I seek only your order extending the time to September 30 within which we may interpose the kind of objection contemplated by Rule 12, and extending also the time within which we may file a motion for a bill of particulars, which, under Rule 7, will expire ten days after arraignment.

Mr. WOODS: Except, your Honor, under both Rule 7 and Rule 12, the Court upon good cause being shown, can extend that time. And we assume that if counsel contemplates filing such a motion, he would——

The COURT: Let me say this, that in this case, I do not think either myself or any other judge in this court is going to hasten unduly a decision in the case. I think the case will receive very careful consideration by every judge or any judge of this court.

22 Mr. CRANEFIELD: I have no fears on that score, your Honor.

The COURT: There are questions involved that are very important to the defendant, not only to the defendant in this case, but to many other citizens of the country. And, I think it is to the interest of anybody now concerned, or who will hereafter be concerned with matters of a similar nature, to get a definite and final ruling on the questions involved here.

Now, I will consent that this matter has never been raised in a criminal case in that way. I would prefer that you——

Mr. CRANEFIELD: Have you examined my motion, your Honor?

The COURT: No.

Mr. CRANEFIELD: If you will look at it, you will find that it is brief. I will hand it up to you. Do you have it there?

The COURT: No, I have the indictment here. That is all I have.

(Mr. Cranefield hands document to the Court.)

The COURT: Then, I take it from that, Mr. Cranefield, that these matters must be raised before any plea is entered.

Mr. CRANEFIELD: Under Rule 12 (a), your Honor, as I read it, the entry of a plea forecloses us from raising any kind of
23 an objection or defenses outlined in that rule.

The COURT: Are there any court rules on this? Did you check that?

Mr. CRANEFIELD: No, your Honor. I have not looked at the decisions.

The COURT: Have you?

Mr. WOODS: I have not checked that, your Honor, previous to this hearing, for the purpose of this hearing.

Mr. CRANEFIELD: Have you any objection to the motion?

Mr. WOODS: I think you are permitted to ask for an extension of time for a bill of particulars, under the rule, within ten days after arraignment.

The COURT: I could extend the time for filing a bill of particulars. In both civil and criminal cases, the purpose of the law is to get the case at issue at an early time. In civil cases we often find that there is a long time elapses before a case comes to issue, because of preliminary proceedings. Now, I do not think anything will be lost here by anybody by granting this motion. We know they will be here.

Mr. WOODS: Oh, yes.

The COURT: I think their word would be acceptable to you, that they will be here.

Mr. WOODS: Yes.

24 The COURT: So, it is not a question of some individual who wants a long delay, and then who possibly may not show

up at the time, which has happened from time to time in the history of this court. But, here is an organization, which is a very solid organization, and certainly it is going to be here in thirty days, or sixty days, or whatever time we set.

Mr. WOODS: Yes. But we would hesitate, of course, to stipulate to do this, because, if we do, then it might be said that the Government has waived something, and has then precluded itself from raising the issue at a later time.

We do not anticipate that the motion is not going to be filed in good faith, certainly. But, we do not want to be foreclosed as to any of our rights.

The COURT: If counsel conceives his duty to be to ask for a bill of particulars within a certain period of time, after this is filed, and if I thought he might be mistaken, I mean—I am not saying he is at this time—but I would rather prolong the time, rather than to act hastily in the matter, and I think under the circumstances that nobody will be hurt if the motion is granted.

Mr. CRANEFIELD: I have prepared a short order, your Honor (handing paper to court).

The COURT: Very well.

Mr. WOODS: I assume then, your Honor, that the extending of the time within which they may move for a bill of particulars applies also to defenses or objections to the indictment, that would be required by Rule 12, is that correct?

The COURT: Yes, as required by Rule 12.

Mr. WOODS: The rule certainly holds them to make a motion as indicated within ten days after arraignment. Rule 12 covers the matter of time within which to file defenses and objections to the indictment.

Mr. CRANEFIELD: I will say, your Honor, that I have no present intention of raising the type of defenses or objections as dictated in Rule 12. But I would prefer not to be foreclosed by the entry of a plea.

The COURT: The Court will rule on that now. If, as a result of the Court's granting of the order to the defendant just now it will appear that the Government will be placed in a situation where it will lose, or stand in danger of losing some rights under Rule 12, or any other rules of the criminal procedure, then, let it be stated on the record, and you may bring in such an order that the time will be extended for the Government, and for the same time that the Court is now extending the time for the defendant, and the time will be extended for the Government, the same time. Is that satisfactory?

Mr. WOODS: Yes, as long as we lose no rights along that line

as long as Mr. Cranefield understands it, and we under-
26 stand it.

The COURT: This motion is granted, with the understanding that because of its granting the defendant will not move to take away or subtract any rights under the rule that the Government has.

Mr. CRANEFIELD: I will take no advantage of the Government, your Honor.

The COURT: How does the defendant plead to the indictment?

Mr. CRANEFIELD: The indictment is against the International Union, United Automobile, Aircraft and Agricultural and Implement Workers of America (UAW-CIO), which, as your Honor knows, is a voluntary unincorporated association, the president of which is Mr. Walter Reuther. And with your Honor's permission, I will present Mr. Reuther to enter the plea. Mr. Reuther?

Mr. WALTER REUTHER: Your Honor, I would like the privilege, if I might, to make a very brief statement before entering a plea for the defendant union, if I might have that privilege.

The COURT: Yes.

Mr. REUTHER: UAW-CIO believes that the case that flows out of the indictment is one to which we attach great importance, because we believe it transcends the impact of what will come from the decision of the courts upon the status of the members of our union. W believe, as we have said many times, that human
27 freedom is an indivisible value; and if the freedoms that our members enjoy, as citizens, and as members of our union, are being curtailed, then the freedoms of everyone are in jeopardy.

I think we are all mindful of the fact that we live in a very difficult period, when free men are being asked to rise to the challenge that the forces of tyranny present freedom with all around the world. And we in the UAW believe that America is the last best hope of free men. But we think we are going to win this struggle against the forces of tyranny, not because our production power is greater, or because our economic resources are greater than the opposition, but because America has been a great symbol of human dignity. It has recognized the value of the individual, and has stood before the world as a great spiritual, moral symbol. And this case that now comes before the court deals with those intangible, moral and spiritual values, the right of people to express themselves freely in the open market place of ideas. The issue specifically here deals with the right of working people, joined in voluntary association through a free labor union, to purchase and to use radio and television time to express their point of view on political matters and on matters of broad public policy.

The COURT: Mr. Reuther, I am sure that most of us are acquainted with that viewpoint, because we read it in the local

press, or in newscasts, on television, or radio. Now, I have
28 permitted you to make a statement, but I hope you will make it short.

Mr. REUTHER: I will conclude.

The COURT: This is no place for talks of that nature.

Mr. REUTHER: I shall be happy to respect your judgment.

The COURT: You may be sure, as I have indicated a little while ago, that the defendant will get a just and honest review of the questions involved in this case by which every judge of this court it comes to.

Mr. REUTHER: We are confident that that will be the case. And I will conclude by saying, your Honor, that the defendant union, UAW-CIO, at this stage of the proceeding, pleads not guilty on all the counts in the indictment.

The COURT: A plea of Not Guilty may be entered for the defendant in this cause.

Mr. WOODS: I recommend no bond.

The COURT: No bond. All right. If you wish to make a statement?

Mr. WOODS: No, we have no speeches to make this morning, your Honor.

The COURT: I said "statement".

Mr. WOODS: Excuse me.

The COURT: I want to give you the same opportunity that
29 the other side had, if you care to make it.

Mr. WOODS: We have no statement to make. Thank you.

The COURT: Very well. Is there any further business before the Court? (No response)

The Court will now recess.

Reporter's Certificate to foregoing transcript omitted in printing.

30 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

NOTICE OF MOTION TO EXTEND TIME, ETC.

To: Fred W. Kaess, United States Attorney.

Please take notice that at the United States Court House in the City of Detroit, Michigan, on the 26th day of September, 1955, at eleven o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, the motion attached hereto

will be presented to the Honorable Frank A. Picard, District Judge.

HAROLD A. CRANEFIELD,
Attorney for Defendant.

Receipt of a copy of the above and foregoing motion acknowledged this 23d day of September, 1955.

GEORGE E. WOODS,
Assistant United States Attorney.

31 United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

MOTION TO EXTEND TIME WITHIN WHICH DEFENDANT MAY MOVE FOR BILL OF PARTICULARS OR RAISE DEFENSES AND OBJECTIONS REQUIRED BY RULE 12 TO BE RAISED BEFORE PLEA—Filed September 26, 1955

Comes now International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), the defendant in the above-entitled cause, by Harold A. Cranefield, its attorney and moves the Court:—

1. that the time within which the said defendant may move for a bill of particulars under Rule 7 of the Federal Rules of Criminal Procedure be extended to October 31, 1955;

2. that the time within which the said defendant may raise defenses and objections otherwise required by Rule 12 of the Federal Rules of Criminal Procedure to be raised before entry of plea be extended to October 31, 1955;

32 This motion is based on the affidavit of Harold T. Cranefield attached hereto and made a part hereof.

Dated this 23d day of September, 1955.

HAROLD A. CRANEFIELD,
Attorney for Defendant.

33 United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION TO EXTEND TIME

UNITED STATES OF AMERICA,
Eastern District of Michigan, Wayne County, ss:

Harold A. Cranefield, being first duly sworn, deposes and says:

1. that he is attorney for the defendant in the above-entitled prosecution and resides in the City of Detroit, Michigan;

2. that defendant is a voluntary unincorporated association; that deponent is General Counsel for the defendant and as such is charged with the general supervision of the representation of defendant in all legal matters and in all actions, civil or criminal, to which defendant is a party;

3. that he has been handicapped and delayed in the preparation of defense in this cause by the absence from the United
34 States of Walter P. Reuther, president of defendant association, during much of the time that has elapsed since the indictment was filed and by the serious illness of Kurt L. Hanslowe, Esquire, one of his associates in the law office of defendant association, for the past seven weeks.

HAROLD A. CRANEFIELD.

Subscribed to and sworn to, before me this 23d day of September, 1955.

LOUISE SARAFIAN,
Notary Public, Wayne County, Michigan.

My commission expires June 8, 1956.

35 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

Order Extending Time Within Which Defendant May Move for Bill of Particulars or Raise Defenses or Objections.—Sept. 26, 1955

The motion of defendant in the above-entitled cause for an extension of time within which to make certain motions under Rules 7 and 12 of the Federal Rules of Criminal Procedure came

on to be heard this 26th day of September, 1955, on the affidavit of Harold A. Cranefield, attorney for the said defendant and thereupon, upon consideration thereof, it was

ORDERED: that the time within which defendant may move for a bill of particulars under Rule 7 of the Federal Rules of Criminal Procedure be and the same hereby is extended to October 31, 1955; and it is

FURTHER ORDERED: that the time within which the defendant may raise defenses and objections otherwise required by Rule 12 of the Federal Rules of Criminal Procedure to be raised before entry of plea be and the same hereby is extended to October 31, 1955.

Dated: September 26, 1955.

FRANK A. PICARD,
District Judge.

36 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

Motion to Dismiss the Indictment—Filed Oct. 31, 1955

The defendant moves, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, that the indictment be dismissed upon the following grounds:

1. The provisions of Title 18, United States Code (Revised), Section 610, do not prohibit payments by labor organizations to defray the expense of preparation for and telecasting of political television broadcasts urging and endorsing the selection and election of candidates for United States Senator and Representatives in the Congress of the United States.

2. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, abridge the freedom of speech and of the press, the right peaceably to assemble, and the right to petition the Government for a redress of grievances, of the defendant and its members, in violation of the First and Fifth Amendments to the Constitution of the United States.

3. The provisions of Title 18, United States Code (Revised),
Section 610, on their face and as construed and applied,
37 unlawfully abridge the right of defendant and its members to choose their senators and representatives in the Congress, guaranteed by Article I, §2 and the Seventeenth Amendment to the Constitution of the United States.

4. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, create an arbitrary and unlawful classification and discriminate against labor organizations and their members, including defendant and its members, in violation of the Fifth Amendment to the Constitution of the United States.

5. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, are arbitrary and capricious and deprive the defendant and its members of liberty and property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

6. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, are vague and indefinite and fail to provide a reasonably ascertainable standard of guilt, in violation of the Fifth and Sixth Amendments to the Constitution of the United States.

7. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, invade the rights of defendant and its members protected by the Ninth and Tenth Amendments to the Constitution of the United States.

Respectfully submitted,

HAROLD A. CRANEFIELD,
JOSEPH L. RAUH, JR.,
Attorneys for Defendant.

October 31, 1955.

38-41 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title Omitted]

NOTICE OF MOTION

To: Honorable Fred W. Kaess,
United States Attorney,
Federal Building,
Detroit 26, Michigan

SIR:

Please take notice that the undersigned will bring the attached motion (heretofore filed in this cause on the 31st day of October, 1955) on for hearing before the Honorable Frank A. Picard, District Judge, at his courtroom in the Federal Building in the City of Detroit, Michigan on the 12th day of December, 1955, at 11:30

o'clock in the forenoon of said day or as soon thereafter as counsel can be heard.

HAROLD A. CRANEFIELD,
JOSEPH L. RAUH, JR.,
Attorneys for Defendant.

Affidavit of Service (Omitted in Printing).

42 AFFIDAVIT OF SERVICE (OMITTED IN PRINTING)

43 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

TRANSCRIPT OF PROCEEDINGS ON MOTION TO DISMISS—December 12, 1955

Transcript of proceedings on motion to dismiss in the above entitled cause before Hon. Frank A. Picard, District Judge, at Detroit, Michigan, on Monday, December 12, 1955.

APPEARANCES:

Fred W. Kaess, United States Attorney,
George E. Woods, Chief Assistant United States Attorney, and Leo Meltzer, Special Assistant to the Attorney General, Washington, D. C., appearing on behalf of the United States.

44 Harold A. Cranefield and Joseph L. Rauh, Jr., 8000 East Jefferson Ave., Detroit 14, Michigan, appearing on behalf of the Defendant.

Detroit, Michigan. Monday, December 12, 1955. 11:00 o'clock A.M.

PROCEEDINGS

The COURT: U. S. A. versus UAW-CIO.

Now, I got the brief from the Government about Monday or Tuesday of last week, didn't I?

Mr. WOODS: No, sir. You got it Friday morning.

The COURT: I mean the defendant, from the defendant.

Mr. CRANEFIELD: Yes, your Honor, I believe so.

The COURT: And I got the brief from the Government

45 Friday before I left for home.

Mr. WOODS: Yes, sir.

The COURT: In spite of that, I have read both briefs. Both briefs. But I am not in a position to—I haven't looked at any of the law at all, you see.

However, if you want to direct—or here is what I hoped I would be able to do: There are certain things in this brief—and remember, I read them over the first time—certain questions that already present themselves to me and I have a kind of a hunch that both sides will want to file a reply brief, don't you?

Mr. Woods: It might well be indicated, your Honor.

Mr. Cranefield: I am in a difficult position to respond to that, your Honor, because unfortunately I did not see a copy of the Government's brief until last night. There was an error of transmission—

Mr. Woods: (Interposing) We are much embarrassed we didn't get Mr. Cranefield a copy. Mr. Rauh in Washington had a copy.

Mr. Cranefield: I am not making any complaint.

The Court: He probably had one before I did.

Mr. Cranefield: I am making no complaint on the matter. It was an error. But I have not had an opportunity to examine thoroughly their brief, so whether we will wish to file a reply
46 brief, I cannot say.

The Court: I am telling you now that you will. I am going to give you a chance to file a reply brief. And I am giving you a chance to file a reply brief.

Now, you can see that no court would be in a position to listen to an argument, and do it intelligently, this morning, would he?

Unless he had been thinking of—the way I hoped it would happen would be that I would get a chance to digest and study this and then when I was ready I would give you an hour or so to argue, or argue as much as you wanted to, and then I could ask you a few questions on things that were bothering me and then make my decision. But in reading the briefs I would know what this case is all about.

Right now, as I take the position of the defendant—and if I am not right, correct me—in the first place, even admitting that Congress had the right to include the word "expenditures", first petitioner-defendant's position is that those are not the "expenditures", items like this, as alleged in the indictment—those are not the type of expenditures that Congress had in mind and that this court, in trying to give a constitutional—in trying to interpret the law constitutionally, couldn't make any other decision except that they are not that kind of expenditures.

47 Then your second point is that if they are included within the expenditures, then the Act is unconstitutional for a lot of reasons.

Mr. Cranefield: That would be——

The Court: (Interposing) Is that right?

Mr. Cranefield: That is a very accurate summary of our basic position, your Honor.

The COURT: Well, flattery will get you no place.

Mr. WOODS: I should have told him, your Honor.

The COURT: All right. Now, I am impressed, of course, by the one case, the Supreme Court case that you cited, I want to tell you now, however, that would be an authority for this court. I mean anything that the Supreme Court does is an authority.

Anything the Court of Appeals of the Sixth Circuit Court does is an authority. But anything some other Circuit Court does in some other part of the country is not an authority. Now, it is persuasive. It is persuasive, but I don't think you will find that that is an authority for me to go by.

Have you found anything to the effect that it is? Or did you just take it for granted, it being a higher court, that it was?

Mr. CRANEFIELD: No, your Honor. I think we have always
48 understood that Court of Appeals, other than those of the Sixth Circuit, have only persuasive authority for this court.

The COURT: But it says in here—your pencil doesn't get hot before you tell me that that is an authority. And also that the opinion of the District Court is an authority. That is not an authority, either. If it were so, why, when I rendered an opinion on something all the other judges would do the same thing, and I would have to follow them here. Well, we don't. We read them, of course, and very often we follow them.

Mr. CRANEFIELD: The one circumstance that we think enhances the persuasive effect of the decision in the Second Circuit Court of Appeals mentioned in our brief is the failure of the Government, in a criminal case, to appeal from the dismissal of the indictment.

The COURT: Well, there may be any number of reasons for that

Now, I am also impressed, on the other hand—I'm speaking to the gentlemen of the Government—I am also impressed by the fact that in your brief you seem to dismiss the authority of that Supreme Court decision with a wave of the hand, and I will tell you now, I haven't read the decision, but if the decision is what they tell me it is you can't dismiss that with any wave of the hand.

49 I warn you that in advance.

Now, let's see if there is any other way I can help you without—and mind you, I haven't even got an idea on this thing. I just read the two briefs. Off the record.

(Discussion off the record.)

The COURT: What do you want to do this morning? Have you gentlemen come here from Washington and other places?

Mr. CRANEFIELD: May I seize this opportunity, your Honor, to present Mr. Joseph L. Rauh, who is associated with me in this defense of this cause. Mr. Rauh is of the Washington bar, a member of the bar of the Supreme Court of the United States.

The COURT: How do you spell that?
Mr. CRANEFIELD: R-a-u-h.
The COURT: R-a-u-h?
Mr. RAUH: Yes, sir.
The COURT: It is Rauh?
Mr. RAUH: Yes, sir.
The COURT: Good. You are in the right place.
Mr. RAUH: Thank you, sir.
The COURT: All right. Anybody else?
Mr. CRANEFIELD: No.
The COURT: All right.

Mr. WOODS: I would like to introduce to your Honor Mr.
50 Leo Meltzer, a member of the Massachusetts bar, and admitted to practice before the Supreme Court of the United States, Special Assistant to the Attorney General, from the Department of Justice.

The COURT: I see. From what part of Massachusetts?

Mr. MELTZER: Boston.

The COURT: Oh, do you know the Cabots and the Lodges, and do you speak to them?

Mr. MELTZER: Yes, I have heard of them. I have spoken to some of them.

The COURT: Good. All right. Welcome to both of you.

Now, what do you want to do this morning? Do you want to talk about this? You admit—you admit that you did all of the things, for the purpose of this——

Mr. CRANEFIELD: (Interposing) For the purpose of the motion.

The COURT: (Continuing)—for the purpose of the motion, you admit that you did the things that they allege. But my policy or my practice is to read the brief completely through and not make a notation, not make a note, not do anything. If I am tempted to mark something, as you do when you get towards the end, you know, I didn't do it.

51 I would like to hear, if you want to say something this morning—oh, something else I have got to take up with you.

I think both sides are agreed that prior to the putting in of the word "expenditures" it had been the custom of certain organizations—maybe corporations were included in this, I don't know—but see if I am right here—it had been the custom to make what might be interpreted as contributions to a party or a candidate, but do it in the form of certain expenditures, payments, and that Congress looked upon that as a loophole that had not been filled by the Act as it was before "expenditures". Am I right on that?

Mr. CRANEFIELD: That is——

The COURT: (Interposing.) I know the Government takes that position.

Mr. WOODS: Yes.

Mr. CRANEFIELD: That is our view of the legislative history of the amendment.

The COURT: Now, here is where we divide. That is, the counsel, in this.

Petitioner takes the position—and this is for the benefit of all —you take the position that when Senator Taft, who is the co-author of the Taft-Hartley bill, who put the word "expenditures" in there—if I make a mis-statement, correct me, because, remember you have lived with this, I haven't—that Senator Taft,
52 when he was being quizzed on it—and if you will notice the plaintiff's brief they go into detail about the number of questions that were asked Senator Taft—do you not, gentlemen?

Mr. WOODS: Yes, sir.

The COURT: (Continuing.) —at that hearing, he said—and you quote this—"We want to put the labor unions in the same position that the corporations have been," or something to that effect. Do you remember that line in there?

Mr. CRANEFIELD: Yes.

The COURT: What is that?

Mr. WOODS: Yes.

The COURT: The government does not quote that. There may be a reason for it, you see. Suspicious as I am of all writers of briefs, I said, "Oh, oh, why is that omitted?"

Now, your position is that they just merely wanted to make sure that contributions which you do not question,—and neither side claims that this is a contribution within the meaning of the statute, do you?

Mr. WOODS: No.

The COURT: No. It is an expenditure. Very interesting question. And I think it has been very well presented up to now. Don't go slipping, either side, here.

But petitioner's position is that is merely what they
53 wanted to do. The government's position is that having seen the danger, or having seen the loophole, Congress wanted to plug it. Am I right?

Mr. WOODS: That's right.

The COURT: Yes. I direct your attention to the fact that the government has not quoted that in its brief. And in petitioner's brief, when you quote that, there are some dots or stars in there indicating that you have left something out. And I said to myself, "Oh, oh, what did they leave out?"

You know, gentlemen, at one time I was on the Michigan Liquor Control Commission and I got suspicious of everybody.

Now, there is one more thing. Oh, yes.

Here is Section 610, and it reads this way to start out with:

"It is unlawful for any national bank or any corporation organized by authority of any law of Congress—"

Would you say that, for example—oh, let me pick—well, I look across the street and I look at the Free Press Building, and I take it for granted the Free Press is a corporation. I don't know. Is it?

Is the Free Press a corporation?

A VOICE: No.

The COURT: It must be. It isn't owned by Knight all
54 alone, is it? Do you know?

A VOICE: It is a corporation, I am sure.

The COURT: Yes. Now, you wouldn't say that the Detroit Free Press is organized by authority of any law of Congress, would you?

Mr. CRANEFIELD: No.

The COURT: Either side?

Mr. CRANFIELD: No.

The COURT: Either side?

Mr. WOODS: No, sir.

Mr. MELTZER: No, your Honor.

The COURT: What is that?

Mr. MELTZER: No, your Honor.

The COURT: All right. Now, in that first part of that section nothing is said about "any" corporation. It is only "any corporation organized by authority of any law of Congress."

Now, when you get down to the second paragraph, it begins like this:

"Every corporation or labor organization—" Is that where the Government, and both of you, take the position—and mind you, I just happened to look out of the window and see the Free Press building over there and I thought of the Free Press—that any corporation—well, the Fress Press, Chrysler, Ford, General Motors, or anybody that is—these insurance companies—
55 do you think that that takes in every corporation?

Mr. MELTZER: If it please the court, may I point out that in the seventh line of the first paragraph it says "or for any corporation whatever".

The COURT: Wait a minute. You are right. I missed that. Well, that clears up something.

Mr. MELTZER: And that, of course, comes within the——

The COURT: (Interposing.) Wait a minute. Yes. Yes, it does. I looked through that thing a dozen times and I missed that. You see how these things help. All right.

Now, there was another question came up. Oh, yes. There was a case—and I can't remember it. You gentlemen may be able to remember it. It was either New York or Pennsylvania—I am pretty sure it was Pennsylvania or Massachusetts, in there somewhere, where to a great extent the Supreme Court for some reason or other exempted labor unions from certain provisions of the antitrust act. Do you remember that group of cases?

Mr. CRANEFIELD: Possibly United States against Hutchinson and the Carpenters' Union.

The COURT: No. I got it. I didn't have a chance to look it up this morning. I know I got it. Do you remember that, gentlemen?

56 Mr. MELTZER: I do not happen to recall it, but I know that there is such a case.

The COURT: Yes.

Mr. MELTZER: I think, may it please the court——

The COURT: (Interposing.) I think it was a hat case. It may have been——

Mr. MELTZER: (Interposing.) United Hatters, Danbury?

The COURT: Wait a minute. Now it comes back to me that it was Danbury, I guess, against some union.

Mr. MELTZER: Yes. United Hatters.

The COURT: Well, the point I am getting at is this: And this thought may not be worth a continental. I don't know. I am thinking out loud with you, because if I see something that I think helps one side, I am here to do justice. I am not here to see who can out-smart the other fellow and get in the law, and if somebody misses something I ask them, because if I don't ask them somebody else is going to ask them when it gets up to a higher court, aren't they?

Now, there is also a rule of law, as I remember—and this is vague—I remember somebody brought an action against individuals of the union and the union itself right here in this court, and I dismissed it, because while they could sue the union, but not individuals, and on the theory of diversity of citizenship all the members of the union that were there had to be diverse

57 citizens and inasmuch as they had members of the union in that other state, why, there was no diversity as to them and I had to dismiss the case.

Which shows that to some extent the courts have treated unions not as they have treated corporations, but as individuals. Now, that would be on your side, wouldn't it?

I was kind of surprised that nobody mentioned that, and maybe after you look at it, or after I look at it, I won't be surprised at all, but, anyway, it is a thought that came into my mind as I was reading it.

See if I can think of anything else I thought of that might call for some action on your part.

Oh, it is petitioner's position, is it not, that if this activity of the union in this particular instance—if that is to be construed as expenditures and constitutional—well, no "as expenditures"—forget the constitutional part—that it is so worded that it would prevent the union from doing almost anything of a political nature, even the publishing of their own party organ that went directly to the members. Not the one that was given away. That is your position.

And that if it applied to them it would also apply to corporations, and in spite of the freedom of the press would stop these editorials from being written by newspapers. Isn't that your position, if that is to be construed in that way?

58 I don't mean that you contend that that can be done or that it does do that. But, do you know, I have seen some editorials in some of these papers on politics. Strange as it may seem. And with some of which I didn't agree all the time.

Mr. RAUH: Your Honor, it is our position that if such an exception were made in the case of a corporation producing a newspaper, that would be an unlawful discrimination against us.

The COURT: Well, yes.

Mr. RAUH: It is perfectly——

The COURT: (Interposing) And that there is no reason for it.

Mr. RAUH: It is perfectly clear, however, that Senator Taft, in the legislative history, did not intend to include the ordinary actions of a newspaper.

The COURT: That was organized for the purpose of publishing news, because he said "They have always written editorials right from the beginning of time."

And, now, the mere fact—I would like to be put straight on that—the mere fact that a Senator has expressed an opinion in the legislative debate as to what an act would cover is not binding upon me, is it, or any court?

Mr. RAUH: You have already said that flattery will get

59 us nowhere, but I would like to point out that that is exactly the full measure of our case.

Senator Taft has taken certain positions. The Supreme Court rejected those positions in the CIO case. The Second Circuit, for what that is worth as an authority, has rejected Senator Taft's position in the Painters' Local case. It is our position, in essence, that that must be rejected here and the statute narrowed. Senator Taft is not binding upon you in any way.

The COURT: Well, I——

Mr. MELTZER: (Interposing) If it please the court, as to a newspaper which is established for the purpose of disseminating news and making editorial comment, we, of course, agree.

The COURT: Who agrees?

Mr. MELTZER: The Government agrees that the statute does not cover.

The COURT: No. It is your position. Now, there is no agreement here. I haven't taken any position——

Mr. MELTZER: (Interposing) No. I understand.

The COURT: (Continuing)—one way or the other. I have merely stated that their position is that.

Mr. MELTZER: Yes.

The COURT: That if it is legal for a newspaper to make those kind of comments, editorially, in a political way, and to stop
60 them from going on the air or television and doing the same thing, that that is unconstitutional not because it is discrimination, but because it is an unfair discrimination.

The government's position is this: Congress takes these discriminations as it comes to them.

Mr. MELTZER: Yes, sir.

The COURT: One by one.

Mr. MELTZER: And deals with the evils as they arise.

The COURT: Well——

Mr. MELTZER: (Interposing) That is what the legislative history shows they have done.

The COURT: Suppose there are two evils. Now, suppose there are two evils. We have got a group of men over here. One of these evils is very much liked by this group but they are in the minority. The other group dislikes them, but both of them are evils. The majority group that dislikes the evil corrects it. The group over here that likes the evil doesn't want to correct it because they say, "You have got an evil over there—a big evil that you like, and you won't correct ours, and your evil is just as big as our evil."

I ask this: Is Congress supreme in telling me—and I am asking; I am giving your position—"We can pick out any evil we
61 want. The other may be worse than the one we correct, but our word on that is final."

Now, is that your position?

Mr. MELTZER: Yes. Our position is that Congress, at the turn of the century, found that only aggregations of wealth in the form of corporations were exerting an undue influence.

The COURT: I mean that is your position. Yes. All right.

Mr. MELTZER: And not until the strength of organized labor reached the point where it became a problem in the business of using aggregations of wealth in influencing——

The COURT: (Interposing) Well, at that time, which was 1947——

Mr. MELTZER: (Interposing) Yes.

The COURT: (Continuing)—let us say—and I am not jumping on the press. I am just taking that because they are in the dissemination of news—the press in this country admittedly was overwhelmingly against one of the political parties here, and very much in favor of the other. It was concentrated wealth, and there was concentrated power. Wasn't one as much of an evil as the other?

Mr. MELTZER: From some aspects, yes.

The COURT: Yes. Now, your position is that they have
62 got to wait a while. Well, when ninety per cent of the newspapers, or ninety-five per cent of the newspapers get to be one way, are we going to wait for the other five per cent?

Mr. MELTZER: But, if it please the court, the judgment is in the legislature.

The COURT: That is your position. That is what I wanted you to say.

Mr. MELTZER: Yes, it is on that.

The COURT: Mind, you, gentlemen, throughout these arguments, I will be making statements that will tell you—undoubtedly tell you, "Well, he has already decided it," or "He is all one side." I am not.

These gentlemen, Mr. Kaess and Mr. Woods, will tell the rest of you that I will ask questions all the way through, and one minute if my position is of any moment to you you will say, "We got him," and the next minute you say, "We lost the judge." You see?

So don't go by anything that I ask. I am just getting information.

Mr. RAUH: May I state our position on the picking out of evils, sir?

The COURT: I think I know yours, but go ahead. Go ahead. I can always learn something.

63 I remember once as a newspaper reporter, when I was working on the newspaper, somebody called up the City Desk when I was right there, and I started to take the item, and they started to give me an item, and I said, "I got all that. Thank you very much but I have got the whole thing."

And when I hung up the telephone the City Editor gave me the devil. "You know what?" he said, "listen to what the man has got to say. He might give you something on that that you haven't got."

Off the record.

(Discussion off the record.)

The COURT: All right.

Mr. RAUH: If your Honor please.

The COURT: Yes.

Mr. RAUH: The Government, we will concede, is right in stating that you can pick out an evil at times, but you cannot, sir, where the purpose is one of discrimination as we believe we have shown.

And, secondly, you have to have an evil; and here, where the disproportion is against labor, where the disproportion against labor expenditures is already great, to further make the disproportion greater is not remedying an evil at all, but it is in fact a means of making the evil worse.

64 The COURT: Well, your position is that that is. But wouldn't I have to take testimony on that?

Mr. RAUH: No, sir. There is plenty of material available to go into this, and the most important fact is that the Congress should have taken testimony, and if this is debated in full, they did not do it for the purpose of remedying an evil.

The COURT: But shouldn't I have—if this case were to turn on that point, certainly I would have to take testimony. I quite agree that perhaps you would be able to prove your point, but we can be all agreed on something and yet testimony be necessary to prove it—that there wasn't any evil for them to cure in the first place, because the disproportion was all on the other side, and that really the activity of the union did not overbalance it in favor of the other side, but merely almost caught up, according to you, with the evil as it has existed and just lessened the evil on the other side.

Mr. RAUH: It didn't even nearly catch up, according to us, sir. The evil—the disproportion was there against us before, as it is against us today, only more. And even if the statute were held completely unconstitutional the disproportion is still there against us. But I don't believe your Honor would need to take testimony since the question is "Was Congress passing an arbitrary

65 and discriminatory law."

The COURT: Well, that may be something. I want to ask you something else. Do you take the position—suppose we declare this unconstitutional on the word "expenditures". Is there a saving clause in there at all that would permit the word "contribution" to go on?

Mr. RAUH: Oh, yes, I am sure that the statute is separable.

The COURT: Is there?

Mr. MELTZER: There is no saving clause in the statute.

Mr. RAUH: Well, I don't think the Government contends that the statute is not separable, when it was there before.

Mr. MELTZER: I make no——

Mr. RAUH: (Interposing) And it is still——

The COURT: (Interposing) I don't know. There is another question for you, gentlemen.

Mr. RAUH: Well, I am quite sure it is separable, your Honor. I would be happy to brief that point.

The COURT: Well, now, might this not result in—suppose the court said "It is unconstitutional", and if that takes it out entirely what may happen to the ban on corporations?

Mr. RAUH: That is not before the court. Actually the
66 line we are asking your Honor to draw does not even completely exempt labor unions. I would like to make that clear.

The COURT: What is that? I didn't quite get it.

Mr. RAUH: The line on the word "expenditures" that we are asking your Honor to draw is not a line that would give labor unions complete freedom.

The COURT: Oh, no.

Mr. RAUH: We have never made such a contention.

The COURT: I know that. No. I mean this: Suppose the whole thing—there was nothing left; that it is not separable or severable, you see, and the whole thing goes out. That would permit corporations to go out here and make contributions, wouldn't it?

Mr. RAUH: If it were not separable.

The COURT: Yes.

Mr. RAUH: I am quite confident it is separable, sir.

The COURT: Now, of course, there is one thing about corporations, why they wouldn't necessarily make either contributions or expenditures, because the people they sell their goods to are on both sides of the fence. They aren't going out socking themselves in the face. That is one thing.

I want to tell you another thing that you might want to
67 go into a little bit more, and that is the position—or the charge is made that in unions you have got your members. Some members may be in favor of one party or one candidate and—well, the other fellow might be even a brother or a relative of the other candidate, and might not be in favor of the action of the union. You know, that is—that charge is made in there.

Well, suppose I own corporate stock, as I do. Am I not in the same position if the Board of Directors goes out here and makes expenditures as the stockholder is? Is not petitioner's position that it is a case of majority rule?

I asked the Government on that, isn't it more difficult—isn't it more difficult for the man who is a stockholder to get out, if he is a stockholder in the corporation, to get out of the holding of his stock, or being a minority, being obliged to follow the majority, than it is a union man to get out of the union? Unless in some cases where there are closed shops and all that?

Mr. MELTZER: Well, all I can undertake to say in that connection, your honor, it is precisely because stockholders in corporations were placed in that position, among other things——

The COURT: (Interposing) That was one of the reasons.

Mr. MELTZER: (Continuing)—that corporations were first
68 legislated against.

The COURT: As a matter of fact, Theodore Roosevelt said that, I think, one time in one of his opening messages to Congress—"It is unfair to spend their money." And your position is that the union man, whose dues are going for this, is in the same position.

Mr. MELTZER: An analagous position.

Mr. WOODS: That's right.

The COURT: Of course, I was thinking about something last night. I have forgotten now what it was. It has escaped me.

Of course, I can sell my stock and in that way I am in a better position than the union man because he can't get along without the union very well. The lever is on your side to some extent. Although one I am in to make money and the other I am in to save my job and the—well, not the fringe benefits, but the things that go along with it.

Mr. MELTZER: If it please the court, I suggest on that point that in both situations the stockholder and the worker are in for their economic interest. Nothing improper about it. They are both prompted by economic motives.

The COURT: Yes, I think that is right. I think that both sides are in there.

Mr. RAUH: So many things, your Honor please, come down to
69 degrees, but the suggestion that a union and a corporation are similar in that regard, I can't accept that. A corporation is set up for profit. The union, as our union, has from the very first been engaged in political action. It is set up for political action among other functions.

When a corporation comes over here and goes to the Secretary of State to set up, they have one thing in mind. Profit. When we set up our union it was intended to be economic, but equally social, legislative and political, and that therefore this comparison between this state raised entity of the sheer matter of dollars and cents for as much as you can get, against the social and political and legislative as well as economic aspect of the union—in our constitution from the very beginning there has been this—I am sure your Honor saw in the brief, we quote our constitution. Our functions are much broader than corporations". The comparison is almost a superficial syllogism that has been made.

The COURT: I got you. All right. I want to ask you something else. The UAW is not a corporation, is it?

Mr. RAUH: No, sir.

The COURT: I want to ask you if the National Manufacturers' Association, whatever it is—National Association of Manufacturers—that is not a corporation either?

Mr. RAUH: No, sir. If it were, the discrimination would
70 not occur. It is because it is not a corporation.

The COURT: Then there is another one in there——

Mr. RAUH: (Interposing) And there is the Chamber of Commerce, the American Medical Association—none of those are corporations. They, therefore, avoid the ban that is placed on labor unions, which is another ground of discrimination.

The COURT: I know that is what you—you have got that in your argument on discrimination.

Is this discussion helpful at all? Do you gentlemen—not giving any idea of the way I feel about it, because I couldn't. I couldn't tell you the way I feel about it at all.

I read some paragraph from the Government's brief and I say, "I am all for it," and then I read something else where the union says something, and I say, "I am all for it."

I don't know. I think I switched probably a half a dozen times in reading the briefs. But I think that is one thing that all judges should do. You have got to—not switch with the winds, but you have got to listen to these arguments.

Now, is there any thing else you want to tell me? And if
71 not, here is what I will do: Well, the holidays are coming. I would give you until the 15th of January to file a reply brief. Is that all right with you, or is that——

Mr. MELTZER: (Interposing) May we have a moment?

The COURT: Yes. Surely.

(Short intermission.)

The COURT: The 16th of January, gentlemen.

(Short intermission.)

Mr. CRANEFIELD: I think we are in agreement that January 16th would be convenient and an accessible date for the filing of reply briefs.

The COURT: All right. Then right after that, that is, when I get these, we will then—I will go over them and there may be some questions. All right, I might do this, even as I have done, write the questions to both sides and get their answers. I don't think that will be necessary, but something may come up.

I think you will find, gentlemen, that I will ask questions, and I will expose my ignorance, and I am not afraid to do it. It is pretty well known anyway, so why should I be afraid to do it now? After that, I think I will call you in, and I will give you probably two hours a side—that ought to be enough, oughtn't it? You
72 don't talk too long, you know.

Mr. WOODS: We might—may I make a statement?

The COURT: Yes.

Mr. Woods: We might point out, your Honor, that up to this point this morning, we had thought that the briefs pretty well stated our position, and that apparently the defendant's brief——

The Court: (Interposing) If you are satisfied with your brief, Mr. Woods, it is all right with me.

Mr. Woods: I just want to point out to the court that we will use that time as indicated, as the court has suggested, to perhaps make a reply brief, but we may not make one.

The Court: All right with me. It is all right with me. I am not going to try to tell you how I think you ought to run your case, or how you ought to conduct it. You may be entirely satisfied, and if you are I am not going to worry about it, unless you get an extension, which I don't want to give, I will take it for granted when the 16th comes and you haven't got a brief in here that you are not going to file one.

Mr. Woods: There isn't going to be one; that's right.

The Court: But——

Mr. Cranefield: May I——

73 The Court: (Interposing) Excuse me.

Mr. Cranefield: Excuse me.

The Court: You can take whatever position you want to, but I can see a lot of reason why, if I were you, I would want to file one.

Mr. Cranefield: May I indicate, you- Honor, that we will file, I think, a reply brief, and something more than that. We may address ourselves, with your permission, to some of the points you have raised this morning.

The Court: That is what I gave them to you for.

Mr. Cranefield: As well as things in their brief.

The Court: That is what I gave them to you for, gentlemen. And I was impartial. I tried to be impartial; where I thought that something was in your favor I said it, and when I thought something was in favor of the Government I said it, and that is very unusual, as probably you gentlemen from Washington would say, "Why, I never heard a Judge do that before," but perhaps I am wrong. I don't know. I may not do it, except this: There is a good point in there and you miss it, or you miss it, and it gets up to the Court of Appeals and even if the Court of Appeals misses it and it gets up to the Supreme Court of the United States the chances are that in that group they are not going to miss it.

74 The chances are they are going to say, "Well, how about this point? This is so important," they say, "we think we ought to have some information on this; we ought to find out about it."

You have seen cases go up. I saw a case go up here to the Court of Appeals on one question and when it came down from

the Supreme Court of the United States it was an entirely different question involved.

Off the record.

(Discussion off the record.)

The COURT: You see, that often happens or may happen. That is why I think that if I have got something here that I think might be of benefit, tell them now, let's get this thought out in the open. Tell the government.

Have you got anything? Anybody want to say anything? I don't want you gentlemen to go back to Washington and say, "We never got a chance to say anything; that Judge talked the whole time."

Well, you might be glad to get out of Washington. If I were you, I would be. But then, you still might want to say something.

Have you got anything, Mr. Rauh, that you want to say at all?

Mr. RAUH: I just want to say that I appreciate the hints, or whatever the questions, are, and that we will get to work on
75 the reply and I hope it will satisfy the Judge.

The COURT: I thought I was the one that kissed the Blarney Stone and not you.

How about you, Mr. Meltzer?

Mr. WOODS: I forgot to tell him, too, your Honor.

The COURT: All right. They have heard me say that before, so they are pretty well versed in it.

Is there anything else, gentlemen?

Mr. WOODS: No, sir.

Mr. MELTZER: No, sir.

Mr. WOODS: That is all, thank you.

The COURT: Any other matter? All right.

76 Reporter's Certificate to foregoing transcript omitted in printing.

77 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

No. 35004

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), DEFENDANT

OPINION OF THE COURT—February 3, 1956

Motion to dismiss the indictment in the above matter, each of its four counts alleging a separate violation of Section 610, Title 18 of the Code, (Federal Corrupt Practices Act) prohibiting political expenditures by labor unions. The pertinent section is set out in the appendix together with the Act's definitions of "expenditure" and "contribution". (Sec. 591)

Here the specific charge is that the "expenditure" violation came in connection with the selection of candidates for a senator and representative to the United States Congress during the 1954 primary and general elections. It is alleged that defendant paid a specific amount from its general treasury fund to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the costs of certain television broadcasts sponsored by the Union from commercial television station WJBK.

It is charged that the broadcasts urged and endorsed selection of certain persons to be candidates for representatives and senator to the Congress of the United States and included expressions of political advocacy intended by defendant to influence the electorate and to affect the results of the election.

It is further charged that the fund used came from the Union's dues, was not obtained by voluntary political contributions or subscriptions from members of the Union, and was not paid for by advertising or sales.

78 FINDINGS OF FACT

For the purposes of this motion the charges alleged are taken as true. United States v. Jones, 207 F. 2d 785; Knoell v. United States, 239 Fed. 16; United States v. Van Auken, 96 U.S. 366.

The contention of defendant is, first, that the expenditures, admittedly so made, are not the type of expenditures intended to be covered and prohibited by Section 610 of the Act. Six other

reasons for dismissing the indictment follow, and all are to the effect that should this court find that the expenditures made by defendant are covered by Section 610, then the provisions of that section are unconstitutional because—

(a) They abridge both freedom of speech and of the press, peaceable assemblage and right of petition, in violation of the First Amendment;

(b) They unlawfully abridge the right to choose senators and representatives in Congress as guaranteed by the Seventeenth Amendment;

(c) They create an arbitrary and unlawful classification and discriminate against labor unions, in violation of the Fifth Amendment;

(d) They are arbitrary and capricious, and deprive defendant and its members of liberty and property without due process of law—in violation of the Fifth Amendment;

(e) The statute is vague and indefinite, in violation of the Fifth and Sixth Amendments; and finally

(f) The provisions invade the rights of defendant and its members, under the Ninth and Tenth Amendments.

It will be particularly noted that six of the seven reasons advanced for dismissing the indictment are based upon the alleged unconstitutionality of the law. Therefore it becomes our
79 duty under the decisions to determine whether or not defendant's first objection is valid for if we are able to determine that the conduct complained against is not proscribed by the Act, without passing upon the law's constitutionality, we must do so. United States v. C.I.O. 335 U.S. 106; United States v. Petrillo, 332 U.S. 1, p. 10; United States v. Rumely, 345 U.S. 41-45; Crowell v. Benson, 285 U.S. 22.

Conclusions of Law

In answer to that first objection we recall very briefly certain salient features in the history of the Federal Corrupt Practices Act. The first legislation of this type was enacted in 1907 and did not include labor unions in its prohibition; neither did it include the word "expenditure" and as pointed out in Newberry v. United States, 256 U.S. 232, it did not apply to "primaries". Admittedly it was not until 1947 that the word "expenditure" was written into the Act which then covered "primaries" and "contributions" of all kinds with a definition of the distinction noted between "expenditure" and "contribution". Since that final enactment (1947), which re-adopted the War Labor Disputes Act including unions and adding primaries, three tests and interpreta-

tions of what the law meant have been made, one by the Supreme Court of the United States, one by the Court of Appeals for the Second Circuit, and one by a District Court.

We examine those decisions.

UNITED STATES v. C. I. O. AND PHILIP MURRAY, 335 U.S. 106

The first interpretation of this statute (June 1948) was United States v. C.I.O. and Philip Murray, its president (335 U.S. 106). In that instance the C.I.O. had published a front page statement by Mr. Murray urging election of a certain congressional candidate in Maryland. This publication occurred in its regular C.I.O. News, a weekly, owned and published by the C.I.O. with money coming from the general funds of the Union (as in the case at bar)
80 but with this additional feature; this particular issue of the News went not alone to the C.I.O. membership but extra copies were run off and distributed to the public.

On defendant's motion the District Court dismissed the indictment on the ground that the statute was unconstitutional as an unwarranted abridgement of the First Amendment. On appeal to the Supreme Court of the United States held that it had long been a policy that if the statute could be interpreted in a manner avoiding the constitutional question it should be, and the court, speaking through Mr. Justice Reed with these words, held that the prohibition in the Act against "expenditure" did not include an "expenditure" such as the one involved;

> "We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an 'expenditure in connection with any election' of candidates for federal office intended to outlaw such a publication."

Justice Frankfurter wrote a concurring opinion.

Four other Justices, however, to-wit Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy, speaking through Mr. Justice Rutledge, agreed the indictment should be dismissed but on the ground that the entire section 313 (610) was unconstitutional. Meeting the question full on they said:

> "If section 313 as amended (610) * * * can be taken to cover the costs of any political publication by a labor union, I think it comprehends the 'expenditures' made in this case. By reading them out of the section, in order not to pass upon its validity, the Court in effect abdicates its function in the guise of applying the policy against deciding questions of constitutionality unnecessarily. I adhere to that policy. But I do not think it justifies invasion of the legislative function by rewriting or emasculating the statute. This in my judgment is what has been done in this instance."

Mr. Justice Rutledge also notes that there is nothing in the Act as adopted that makes the "source" of the funds important. If the Union sponsored the "ad", it was immaterial whether the funds used came either through dues, from newspaper subscriptions,
81 or a special fund raised for that purpose, although Senator Taft, who assumed the burden of defending this particular section in the Senate, differentiated between funds used from dues, and those subscribed for or raised for a certain special purpose. In that case also (C.I.O. News, supra) it was emphasized that the word "expenditure" was merely added to the Act to cover situations not previously included within the accepted legislative interpretation of "contribution". Justice Reed said—

> "Apparently 'expenditure' was added to eradicate the doubt that had been raised as to the reach of 'contribution,' *not to extend greatly the coverage of the section.*" (Emphasis ours)

Therefore we find that when the first decision interpretive of this Act was announced by the Supreme Court of the United States one District Judge and four Justices of the Supreme Court had held the section unconstitutional and five justices of the Supreme Court refused to pass upon its constitutionality as unnecessary, but nevertheless dismissed the indictment because it did not state a cause of action, to-wit, "expenditure" didn't include the type of "expenditure" made by the Union, although authorized by its president.

It will also be noted that Mr. Justice Reed's majority opinion states that unless the legislation is so construed

> *"the gravest doubt would arise in our minds as to its constitutionality."* (Emphasis ours)

UNITED STATES v. PAINTERS LOCAL UNION No. 481 (172 F. 2d 854)

The second case of interpretation was United States v. Painters Local Union No. 481, 172 F. 2d 854, decided by the Second Circuit Court of Appeals in 1949. The charge was against the Union and its President for placing and paying for a political ad in a *daily newspaper of general circulation and a political broadcast over a commercial radio station*, both out of funds from the general treasury of the Union.

[File endorsement omitted]

[Title Omitted]

United States District Court, Eastern District of Michigan
Eastern District of Michigan
Southern Division

[File endorsement omitted]

[Title omitted]

82 In our opinion this case is on all fours with the case at bar except that it was a "television" broadcast instead of "radio"—which difference we do not deem important.

In Painters Local Union, supra, motion for dismissal by defendant was denied by the District Court which held the act constitutional. The question of whether these were "expenditures" within the meaning of the act was not raised by defendant nor discussed by the District Court and the case came to the Second Circuit supposedly solely on constitutional issues. Nevertheless that Court of Appeals reversed the District Court and, using the rationale of the Supreme Court in the C.I.O. opinion, supra, ruled on the scope of the statute and not on its constitutionality. It held that such political advertisements in a media of information commercially owned and of general circulation were not prohibited "expenditures". As Judge Hand stated——

> "It seems impossible, on principle, to differentiate the scope of that decision (referring to U.S. v. C.I.O., supra) from the case we have before us."

We feel compelled to adopt that same language and repeat that the facts in United States v. Painters Local Union No. 481, supra, and the matter before us are as alike as two peas in a pod.

Nor must we neglect to add that the Court of Appeals (Second Circuit) declared that it too had grave doubts concerning the constitutionality of the Act if the word "expenditure" were broadly construed.

It is interesting to note that here the government had a case made to order for appeal but no petition for certiorari was filed to the Supreme Court. See Mr. Justice Frankfurter's opinion—Andres v United States, 333 U.S. 740, at page 756, concerning a similar situation.

The government insists that a decision of the Second Circuit is not an authority we must follow. With this statement
83 we agree. But District Courts have generally followed decisions of other Courts of Appeals which would decide the

matter and where their own circuit had not yet spoken. King v. United States, 10 F. Supp. 206; Flannery v. United States, 25 F. Supp. 677; The Bleakley No. 76, 56 F. 2d 1037. It is on the theory that such procedure is in the interest of promoting a single system for the administration of justice by having a uniform construction, and as stated in Martyn v. United States, 176 F. 2d 609——

> "We would not be justified in adopting a different construction of the Act than that which prevails in the Fourth and Ninth Circuits unless we were able to demonstrate that that construction was clearly wrong."

UNITED STATES v. CONSTRUCTION & GENERAL LABORERS LOCAL UNION No. 264

101 F. Supp. 869

The third and final decision interpreting Section 610 is United States v. Construction & General Laborers Local Union No. 264 and two officers, 101 F. Supp. 869, decided in 1951. It goes further than the case at bar. That indictment involved twelve counts and charged various kinds of "contributions or expenditures" by defendants contrary to the provisions of the Federal Corrupt Practices Act. In the case at bar there is no charge of "contribution" violation. The entire charge is devoted to "expenditure".

In General Laborers, supra, the government proved that the President, business agent of the Union, had been a candidate for Congress, that the Union had paid certain expenses connected with his campaign, and that three of the Union employees, two of whom were on the Union's regular payroll, had been very active in his support. On Union time and increased pay, they had put up posters, passed out cards and pamphlets, driven voters to register and to the polls election day, and had managed the "Freedom Train", a replica of the original Freedom Train, the vans of which contained copies of historical American documents as well as
84 their candidate's campaign literature. One man on Union pay had worked around the candidate's home cutting the grass and in one instance $200.00 was paid by the Union to some worker in connection with the candidate's campaign. There is no totalling up or reckoning of just how much money was expended directly or indirectly by the Union in this campaign but the court, rendering its opinion, stated——

> "* * * It is hard to conceive that the Congress had in mind when it enacted this particular law, that an uncertain, insignificant amount such as is involved here should be considered as an expenditure and used as a basis for a criminal prosecution."

Here again the Court takes issue with the broad construction of the word "expenditure" urged by the government, adding

> "Reiterating, it is difficult for me to believe that the Congress, with its vast knowledge of the practical application of its acts, intended such a restriction as is sought to be placed upon labor unions as here."

However, the distinction made by the District Court in the General Laborers case, supra, that it is not the "type" of activity that Congress had in mind but the "degree" of activity that should govern, does not impress us. We do not find anything in this Act that is authority for such a statement. The rule of de minimis non curat lex does not apply to criminal cases. United States v. Construction and General Laborers (supra).

Effect of These Three Decisions?

Having considered defendant's three authorities we find no case cited by the government otherwise interpreting this section of the Act, and its attempts to distinguish those cases from the case at bar are either futile or picayune. The government has, however, presented a very scholarly brief and advanced many arguments for denying the motion, tracing the history and objectives of this legislation from the first enactment of the Federal Corrupt Practices Act in 1907 when "money contributions" by corporations were prohibited, right down to the present amended version passed in 1947 where the word "expenditure" was added as a supplement to "contribution".

85 None of these three above cited cases, and surely not this court, challenges the right of Congress to pass any and all legislation deemed necessary to keep elections free from taint of fraud or coercion unless, of course, in those activities Congress violates provisions of the Constitution. Ex Parte Yarbrough, 110 U.S. 651; United States v. Gradwell, 243 U.S. 476; Burroughs and Cannon v. United States, 290 U.S. 534; United States v. Classic, 313 U.S. 299.

That is not the point at issue. We can assume that Congress wrote the law it wanted and still we find that in all three cases interpreting that latest Congressional effort, the first before the Supreme Court of the United States, the second before the Second Circuit Court of Appeals, and the third before a District Judge, each court determined that Congress did not intend to include as an expenditure the respective violations charged therein—in each case the same charges as here—and all Justices and Judges stated that in their opinion any other interpretation would bring into question the constitutionality of the section—a possible defense, incidentally, that they indicated would have a great deal of merit. And so anx-

ious were the higher courts to avoid testing the constitutionality of the Act challenged in two of those three cited decisions, that they, of their own volition, changed the ground for sustaining the dismissal of the indictment to avoid the constitutional questions.

It is true that stress is laid in each of those three cases upon the alleged "triviality" of the charges; but, we ask, where is the line to be drawn? There is nothing in the Act that sets out any limit of demarcation of the amount expended before it becomes an "expenditure"; and this appears to this court to be very important. There is no minimum or maximum set on what is or is not "expenditure" and we believe that this court would be presumptuous in trying to write into the Act something that Congress avoided doing,
86 evidently because what it enacted might be unconstitutional, or to indulge in a new theory of what is or is not an expenditure, not suggested by our higher courts.

According to the authorities the Union was not making an expenditure on behalf of a political candidate. It desired to inform its members and others of the position of the Union on those seeking certain federal offices. It was exercising the right of free speech. The question then might present itself as to whether or not what the Union did was in fact "make a contribution". This might be important if the Union were charged with "making a contribution". It is not. It was so charged in United States v. Construction & General Lab. L.U. No. 264, supra, on very similar facts, but still the court held that its acts did not encompass either a "contribution" or "expenditure".

What then did Congress intend by "expenditure"? At least one court has enumerated possible acts of "expenditure" under Sec. 610 but we will not attempt it. What we will say, however, is that the Congress did not intend to write an unnconstitutional law. United States v. C.I.O., supra, p. 120. And it has been pointed out in the three above cases and in the debates of Congress, that to interpret this statute otherwise than has been done, is to jeopardize not only the right of every newspaper to print any political editorial during a campaign in which federal officers are elected, advocating one adversary over another, but it may also make remarks or speeches of any delegate or representative to a convention or gathering (other than a political meeting) subject to this Act, where the expenses of that delegate are being paid for by a union or corporation. (See the three cases cited supra and Congressional Record of Debates.)

It is also well to know that the arguments so ably advanced by the government's briefs were all presented to the courts in the three above cases, and still the decision went against the
87 government in each case. In fact, Mr. Warren Olney, III, appearing before Congress admitted that the Act was very

unsatisfactory and practically unenforcible. What possible justification could there be for this court to arbitrarily make, either an "addition" to the Act, or give it an "interpretation" which up to this day has not been attempted by either the Supreme Court of the United States, one of our Courts of Appeal or one of our District Judges? Undoubtedly there will be those who will not agree with the Supreme Court's interpretation of the word "expenditure" but it may well be that time will prove that the real intent of Congress, as stated and restated in the government's briefs, to-wit to destroy the power of any single group to control elections and to make more equal the forces which may battle for victory, will best be attained because of that interpretation. This has happened before.

As is our duty, we try to follow the law as laid down by our Supreme Court and there is no difficulty in doing so here. What the Supreme Court has said is not ambiguous to us.

If the District Judge can decide this case without ruling on the constitutional questions raised, he should do so. Since we believe that we can, we must not avoid our duty and make it necessary for the higher court to switch the grounds upon which the indictment must be dismissed. Our decision is that under the authorities the "expenditures" charged in this indictment are not expenditures prohibited by the Act. If appealed, our Supreme Court may determine otherwise and may at that time decide upon the law's constitutionality or remand to us. Until the Supreme Court enlightens us further, we have no other alternative but to follow the above authorities.

An order, dismissing the indictment, may be presented for our signature.

FRANK A. PICARD,
United States District Judge.

Dated: February 3rd, 1956.

88 APPENDIX

Title 18 Federal Code Annotated, Section 591

"The term 'contribution' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable;

"The term 'expenditure' includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable;"

Title 18 Federal Code Annotated, Section 610

"It is unlawful * * * for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

89 [File endorsement omitted]

United States District Court Eastern District of Michigan Southern Division

UNITED STATES OF AMERICA, PLAINTIFF

vs.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO) DEFENDANT

ORDER DISMISSING INDICTMENT—February 8, 1956

The above action having come on regularly to be heard on the 12th day of December, 1955, upon the motion of defendant to dismiss the indictment and the said motion having been submitted on briefs, all counsel having waived oral argument, and the Court being fully advised in the premises and having on the third day of February, 1956, filed the Opinion of the Court wherein it is

concluded that said motion should be granted and the indictment dismissed upon the ground that the expenditures charged in the indictment are not expenditures prohibited by law and that the indictment therefore fails to state facts sufficient to constitute an offense against the United States. Wherefore, it is

ORDERED, adjudged and decreed that the said action be, and the same hereby is, dismissed.

FRANK A. PICARD,
District Judge.

Dated: February 8th, 1956.

Approved as to form
GUY E. FUDS,
United States Attorney.

90 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES —Filed February 20, 1956

I. Notice is hereby given that the United States of America hereby appeals to the Supreme Court of the United States from the final order of the district court, entered February 8, 1956, dismissing the indictment which charged defendant with violations of 18 U.S.C. 610, as amended.

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Transcript of docket entries
2. Indictment
3. Motion to dismiss the indictment
4. The opinion of the district court on the motion to dismiss
5. The order of February 8, 1956, dismissing the indictment
6. This notice of appeal

91-92 III. The following question is presented by this appeal:

Whether offenses under 18 U.S.C. 610, as amended, were charged in the indictment, each count of which alleged that on a specified date the defendant labor union made an expenditure of a specified sum from its general treasury fund, consisting of dues paid

by members of the union, to defray the expenses of a particular political television broadcast sponsored by the defendant over a commercial television station in which the defendant had no interest, which was intended to influence the electorate generally and urged and endorsed the election of certain candidates for United States Senator and Representative in Congress in the election held in Michigan in 1954.

SIMON E. SOBELOFF,
Solicitor General,
Department of Justice,
Washington 25, D. C.
FRED W. KAESS,
United States Attorney,
Detroit 26, Michigan.

Return of Service (omitted in Printing)

93 Clerk's Certificate to foregoing transcript omitted in printing.

Supreme Court of the United States

94 ORDER NOTING PROBABLE JURISDICTION—April 23, 1956

APPEAL from the United States District Court for the Eastern District of Michigan.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

April 23, 1956

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